

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.3580 of the)	MB Docket No. 17-264
Commission’s Rules Regarding Public Notice)	
of the Filing of Broadcast Applications)	
)	
Revision of the Public Notice Requirements of)	MB Docket No. 05-6
Section 73.3580)	

**COMMENTS OF THE
PUBLIC NOTICE RESOURCE CENTER**

I. INTRODUCTION AND SUMMARY

The Public Notice Resource Center (“PNRC”) and the undersigned organizations respectfully submit these comments in response to the above-captioned Notice of Proposed Rulemaking (“NPRM”) that would update or repeal Section 73.3580 of the Commission’s rules. Section 73.3580 requires broadcast applicants to provide public notice of the filing of various license applications. We oppose outright repeal of the rules or any update that would eliminate current requirements that broadcasters provide written notice of their applications in a local newspaper. We take no position on cases where applicants are required to broadcast announcements regarding the filing of applications.

PNRC is a nonprofit organization that provides research and education promoting effective public notice. We are supported by contributions from newspaper and journalism organizations throughout the U.S. Joining PNRC in submitting these comments are the **XX** organizations listed in the addendum.

II. THE PURPOSE OF PUBLIC NOTICE

At the risk of provoking the mirth of Chairman Pai and Commissioner Carr, who find humor in their statements about the durability of the current rule, we note that in 1789, the Acts of the First Session of the First Congress required the Secretary of State to publish all bills, orders, resolutions and congressional votes in three publicly available newspapers.¹ An important premise of those Acts, and of public notice laws in general, is that citizens in a democracy require information about government activities in order to make well-informed decisions.²

Indeed, the Commission’s proposal notes that it adopted public notice requirements for broadcasters in 1962 “to ensure that members of the public were made aware of broadcast applications, thereby affording them a meaningful opportunity to participate in the broadcast licensing process.” Nevertheless, while the proposal repeatedly emphasizes the importance of reducing broadcasters’ costs and “regulatory burdens”, and providing them with more “flexibility,” it never explains how eliminating

¹ Shannon E. Martin, “State Government, Freedom of Information laws, and the World Wide Web at the Beginning of the 21st Century, (refereed/accepted) AEJMC Southeast Colloquium, Gulfport, MS, March 7-9, 2002.

² See id. at 2

newspaper notice will promote citizen input in the licensing process. The Commission's only argument for abandoning such notice appears to be that the existing rule is old and "Americans today are accustomed to using the Internet to obtain a wide array of information".

Although we agree that reducing costs and regulatory burdens are laudable goals, we note that the cost and burden of placing a public notice advertisement in a newspaper is microscopic. Moreover, we strenuously reject the notion that providing broadcasters with greater "flexibility" should play any role in the Commission's decision-making process in this matter. In fact, quite the opposite. The Commission's goal here should be to eliminate broadcasters' flexibility by developing rules that provide them with precise instructions about how they must notify the public to promote the highest level of input. After all, it's not in the broadcasters' interest to invite increased scrutiny of their applications. They are the proverbial foxes guarding the citizen henhouses here. They have every incentive to use any discretion the Commission may grant to *minimize* participation in the process by which their applications will be reviewed.

The Commission also states that the "rule revisions on which the NPRM seeks comment are intended to reduce unnecessary regulation and regulatory burdens that can impede competition and innovation in the media marketplace." If there is a serious argument to be made that requiring broadcasters to notify the public via written notice in a local newspaper about the applications they file with the Commission impedes their ability to compete and innovate, we haven't heard it.

III. NEWSPRINT IS SUPERIOR TO THE INTERNET AS A SOURCE OF PUBLIC NOTICE

The Commission places a great deal of emphasis on the fact that the "Internet has become a major part of consumers' daily lives and now represents a widely used medium to obtain information," but it fails to address intrinsic differences between the print and online experiences that make newspapers a superior medium to the Internet as a source of public notice. When people read a newspaper the tactile, contemplative experience and the size of its pages encourage them to find information they didn't expect to see.³ That serendipitous process guarantees that public notices in local newspapers will be seen by many people in the community who didn't pick up the paper intending to read them.⁴

People behave differently on the Internet. They tend to be goal-oriented. They go to websites for a particular reason. (Note to Chairman Pai: Google it if you don't believe us.) Although digital interfaces encourage some serendipity, it tends to be unidirectional⁵ and often focused on the sensational⁶. Public notices don't stand a chance in that environment; they get lost and are easily hidden. Moreover, the massive migration from desktop computers to small-screen mobile devices has exacerbated the problem. Two recent examples from another federal agency that rushed to judgment on this issue are illustrative.

a. Nestle Waters North America controversy in Michigan

Over the last decade, the Environmental Protection Agency ("EPA") and its state affiliates have increasingly moved their public notices from newspapers to the Internet. As a result of those changes, in September 2016, the Michigan Department of Environmental Quality ("MDEQ") was allowed to post exclusive notice on its website of its draft approval of a proposal to allow Nestle Waters North America to extract significantly more groundwater in Osceola County for its Ice Mountain bottling plant in the state.

³ Jack Shafer, "[Why Print News Still Rules,](#)" Politico Magazine, Sept. 10, 2016

⁴ See, e.g., Mary Duan, "[A 99-year-old Carmel woman fights to keep her home from Wells Fargo,](#)" *Monterey County Weekly*, Nov. 9, 2017

⁵ See Shafer above

⁶ See e.g., [Wikipedia entry on clickbait](#)

Although the notice had been posted on the MDEQ website for 42 days, citizens in Michigan were shocked to learn about the proposal when a story about it was published on Oct. 31 in a local newspaper, the *Grand Rapids Press*, and on its website, MLive.com.⁷

Even environmental activists who might have been expected to object to the proposal were left in the dark. MDEQ did not receive a single comment on the proposal before the newspaper story brought it to light. By early December, the agency had received over 3,000 comments⁸; by April of the following year, MDEQ Director Heidi Grether said she had personally received over 35,000 emails on the subject.⁹ The flood of citizen input forced MDEQ to extend the comment period on three separate occasions by a total of 165 days, and to schedule a public hearing.¹⁰

Speaking to a group of environmental lawyers, Ms. Grether admitted that the exclusive notice on the MDEQ website wasn't enough. "Was (the Nestle proposal) advertised and noticed in a way it should have been?" she asked. "Probably not, it appears to me."¹¹

b. Buffalo National River hog farm in Arkansas

In August 2012, the Arkansas Department of Environmental Quality ("ADEQ") approved a general permit to allow Cargill and a group of local farmers to build a Concentrated Animal Feeding Operation on the banks of the Buffalo National River.¹² New public notice rules approved by EPA allowed ADEQ to provide exclusive notice of the permit filing on its website. Although it had been posted for 30 days on the ADEQ site, the agency didn't receive any comments.¹³ Citizens in Newton County were astonished when they discovered later that year that a hog farm was being built near their homes.¹⁴

Hundreds of thousands of dollars have been spent defending and settling lawsuits filed over the hog farm.¹⁵ Moreover, the experience turned many local citizens into activists intent on protecting the environment.¹⁶ If ADEQ had instead spent a few hundred dollars publishing notices in a local newspaper, the citizens living near the farm would have had an opportunity to weigh in on the proposal and much of the conflict may have been avoided.

This insight wasn't lost on Teresa Marks, who then served as director of ADEQ. "I understand the way people feel," she told a local newspaper when she was still heading the agency. "They feel like this happened and nobody knew anything about it."¹⁷ That public reaction was the predictable result of a policy that gives corporations and government agencies the authority to post notices on their websites instead of local newspapers.

⁷ Garrett Ellison, "[Nestle bottled water plant upgrade driving more groundwater extraction](#)," *Grand Rapids Press*, Oct. 31, 2016

⁸ Ellison, "[Public wasn't adequately notified of Nestle water request](#)" *Grand Rapids Press*, Dec. 6, 2016

⁹ Ellison, "[DEQ bracing for Nestle permit lawsuit](#)," *Grand Rapids Press*, April 28, 2017

¹⁰ *Id.*

¹¹ See Ellison, *Grand Rapids Press* above, Dec. 6, 2016

¹² [Letter from ADEQ Director Teresa Marks to the National Park Service](#), Jan. 3, 2013

¹³ *Id.* pg. 2

¹⁴ David Ramsey, "[Hog farm near the Buffalo River stirs controversy](#)," *Arkansas Times*, Aug. 15, 2013

¹⁵ [Google search on "Buffalo National River lawsuits"](#)

¹⁶ Website, [Buffalo River Watershed Alliance](#)

¹⁷ See Ramsey above, *Arkansas Times*, Aug. 15, 2013

IV. NEWSPAPERS STILL REACH A SIGNIFICANT AUDIENCE

More than 169 million people in the U.S. read a newspaper at least once a month in print, on a website or via mobile app.¹⁸ That's roughly 69 percent of the U.S. adult population. Other estimates focusing on different metrics put total U.S. daily newspaper circulation in 2016 at 35 million every weekday and 38 million on Sundays.¹⁹

Although the public conversation about newspapers tends to focus on the shift to digital – especially among elite communities in major metropolitan areas like Washington, D.C. – over 80 percent of those readers continued to read a print version of their newspaper.²⁰ Moreover, local newspaper readership in small communities is commonly recognized to be stronger than in metro areas.²¹

a. Newspapers readers are more civically engaged

People who read newspapers are more likely to be civically engaged. Of those who always vote in local elections, 27 percent are more likely to read the daily newspaper than a typical adult²². Seven in 10 of those voters read newspaper media in print, online or on mobile devices in a typical week, and nearly eight in 10 contribute money to political organizations.²³ Policymakers have long understood that newspapers attract civically engaged readers. It is why they have passed laws limiting the publications that qualify to run public notices to those that report local or general news.²⁴

b. Many people still read public notices in local newspapers

Two recent national studies clearly indicate that many people read public notices in their local newspapers. The studies also show that newspapers remain a far more effective medium for public notice than, for instance, government websites. One study asked respondents to indicate on a scale of one to seven how often they read public notices in their local newspaper, where one equals “never” and seven means “very often”. The mean score of their response was 3.93, with a full 21 percent saying they read notices in the paper “very often” and 81 percent indicating implicitly they read newspaper notices at least some of the time.²⁵

The second study tracks fairly closely with those results. Approximately 25 percent of respondents said they “always” or “frequently” read “legal notices” in a local newspaper. Moreover, the number who prefer to read public notices published in a local newspaper outnumbers those who would like to see them moved to government websites by a margin of five to one.²⁶

¹⁸ [Nielsen Scarborough USA study](#), 2016

¹⁹ [“State of the News Media 2017,”](#) *Pew Research Center*, June 17, 2017

²⁰ See Nielsen Scarborough study above

²¹ Damian Radcliffe and Christopher Ali, [“Small-market newspapers in the digital age,”](#) *Tow Center for Digital Journalism*, Columbia University, 2017

²² [Nielsen Scarborough 2014 Newspaper Penetration Report](#), Feb. 18, 2014

²³ *Ibid.*

²⁴ Shannon E. Martin, *Newspapers, Official Advertisements, and the Intentions of Public Notice Laws*, 5 N.J.J. Comm. 104, 106

²⁵ Susquehanna Polling & Research, [NNA Select Community Research Survey](#), March-April, 2017

²⁶ Pulse of America, [National Survey Report](#), Feb. 2017

c. Public notice is already on the Internet

In its proposal, the Commission never specifies where on the Internet broadcasters might be required to publish their application notices if Section 73.3580 is abolished or amended. As Commissioner Clyburn implies in her statement, the broadcasters' own websites would presumably serve that role. The Commission appears to be unaware that most newspapers already supplement their print notices by publishing them on their websites. Or that many newspapers also post their notices on statewide public-notice websites operated by their state press associations.²⁷ In fact, laws have been passed in 12 states specifically requiring newspapers to supplement the print versions of their notices by posting them on their own sites or their state press associations' aggregated site, or both.²⁸ There are also two national websites that index newspaper notices by state and allow for site-wide searches.

This widespread aggregation of newspaper notices increases their accessibility via the tools most people use to find information on the Internet – search engines. In fact, the two national websites that index newspaper notices – mypublicnotices.com and publicnoticeads.com – are the first and second websites presented in the organic results of a Google search on the keyword “public notices.” Indeed, six of the first seven websites listed on the first page of results on a Google search of that term are newspaper-based sites.²⁹

So if the Commission eliminates newspaper notice requirements under Section 73.3580, it will almost certainly also reduce the presence of those notices on the Internet. Could it be any clearer, then, that doing so would significantly diminish citizen input in the licensing process?

d. Eliminating newspaper notice disadvantages a wide swath of Americans

Significant numbers of Americans still do not have access to the Internet. The latest research indicates that over 24 percent of U.S. adults remain unconnected to the Internet.³⁰ The problem is particularly acute for older adults in rural areas, for most of whom newspapers remain the primary source of news and information about local events.³¹ Lack of Internet access is also higher among minority populations, and among adults with less education and income.³²

e. Eliminating newspaper notice will result in less reporting on broadcaster applications

In some cases, the most significant consumers of public notice advertisements are the journalists who read the newspapers that employ them. They have a professional incentive to learn more about the plans described in public notices. Moreover, journalists can translate the brief, technical language of a public notice into a full story that provides the context and substance essential to ensuring that citizens who are potentially affected by the notice can understand what is at stake and make well-informed decisions.

For the last several years, PNRC has recognized leading journalists for their work in calling the public's attention to important notices. In 2014, our Public Notice Journalism Award was won by Jim

²⁷ [Hyperlinked list of 42 statewide public notice websites](#), PNRC website

²⁸ [State statutes requiring web posting of public notices](#), PNRC website

²⁹ [Google search from Incognito window](#), Dec. 10, 2017

³⁰ [Wireless Broadband Alliance study](#), June 2017

³¹ Jennifer Levitz and Valerie Bauerlein, "[Rural America Is Stranded in the Dial-Up Age.](#)" *Wall Street Journal*, June 15, 2017, sub. required

³² [Internet/Broadband Fact Sheet](#), Pew Research Center, Jan. 12, 2017

Lockwood, a journalist in Scranton, Pennsylvania, who followed up on two notices required by Commission rules that were published in his paper, *The Times-Tribune*.³³ The notices were submitted on behalf of Verizon Wireless, which was planning to erect three 121-foot-tall cellphone towers disguised as flagpoles or tree poles in public parks. (Mr. Lockwood learned about the third tower in the course of his reporting on the first two notices.) How likely would it have been that citizens in Scranton would have learned about those plans if the Commission had granted the phone company “flexibility” in its notice requirements?

V. WHY IS THE COMMISSION SO DISMISSIVE OF NEWSPAPER NOTICE?

We were struck by the dismissive tone adopted in the statements of Chairman Pai, and Commissioners O’Rielly and Carr, about the notion that local newspapers might still serve as the most effective means to deliver notice to the public. As we noted earlier, Chairman Pai and Commissioner Carr actually find humor in that prospect, as if the conclusions they draw are so obvious they are not even worth discussing. How did we reach a point where their consideration of the issue of public notice is so facile they ridicule a longstanding practice without bothering to provide *any* evidence that the alternative they’re promoting would be an improvement? What is it about the environment in which they operate that leads them to conclude without any thought that the Internet is obviously preferable to newsprint as a mechanism for delivering public notice?

We have some thoughts on that subject.

The Commissioners and others employed by the agency are highly educated professionals who work in the Washington, D.C metro area. Like other members of that elite cohort, they are likely to spend a significant percentage of each day connected to the Internet on their office and home computers, and on their smartphones and digital tablets. They are also likely to travel in social circles that take the decline of newspapers and the inevitability of the Internet as an article of faith. It’s practically in the air they breathe.

These ideas are so fixed in their minds that it often shortcuts consideration of important issues like those we are addressing here. The possibility that local newspapers are still the best distribution system for public notice isn’t given a second’s thought. The Internet looms so large in their world they fail even to consider that much of the information there gets lost or hidden, and that the same is likely to happen with notices about broadcast applications.

We can’t deny that newspaper circulation has been in decline for many years and that the space in our lives occupied by the Internet continues to grow. But does it follow inevitably that “the Internet” is a better way to inform the public than local newspapers? We believe strongly that it doesn’t.

The Commission also signals its lack of seriousness about this issue by asking us to comment on this proposal without specifying where on “the Internet” it intends to mandate that broadcasters post these notices. If they were required to post notices about their applications for a week on the top half of the home page of their local news websites, for instance, perhaps we might agree that it would be a satisfactory alternative to the local newspaper. But the Commission instead has left us to guess what their Internet alternative might entail, making it impossible to measure against their current public notice requirements.

There is another factor at play here, we believe, that is apparent from the statements and language the Commission adopts in its NPRM. Studying both, it’s impossible not to draw the conclusion that the

³³ Jim Lockwood, [“Public comments accepted on proposal for cellphone towers in Scranton parks.”](#) June 15, 2014

Commission simply doesn't have the same commitment to transparency it had in 1962 when it adopted Section 73.3580, which sought to ensure that members of the public are informed about broadcast applications and provided with "a meaningful opportunity to participate in the broadcast licensing process."

How else to explain the Commission's apparent belief that members of the public will check a station's website to find out if they have filed a license application? Or how else to explain what Commissioner Clyburn calls the "(e)ven more ridiculous ... suggestion that members of the public can 'sign up to receive Commission-generated RSS feeds' to alert them of such a filing"?

In his statement arguing for the full elimination of all Section 73.3580 public notice requirements, Commissioner O'Rielly actually asserts the public can obtain information about broadcast applications "from a broadcaster's public inspection file or through standard notices provided by the Commission," as if anyone aside from the lawyers and lobbyists working on behalf of broadcasters or their competitors even know where to look for such things. It's pretty clear from this NPRM that that's the key constituency the Commission believes its public notice rules should serve.

Another clue can be found in the nomenclature the Commission employs to describe the members of the local communities served by the broadcasters it exists to regulate. It refers to them six times in the NPRM as "consumers". Not once does the Commission call them "citizens." According to Merriam-Webster, consumers "utilize economic goods" while "citizens are entitled to the rights and privileges of a freeman". Perhaps the Commission's preference for the former usage can help us understand why it doesn't put more thought in how to notify the latter when their rights and privileges are in play.

VI. CONCLUSION

We are opposed to any proposal that would eliminate the written notice in local newspapers now required for certain broadcaster applications under Section 73.3580. There is absolutely no doubt it would result in less public awareness and citizen input into those applications, and the Commission failed to provide any evidence that that would not be the foreseeable result of such an action. In its haste to provide broadcasters with "flexibility," and to categorize even minor public notice requirements as "unduly burdensome" regulation, the Commission risks signaling its complete abdication of transparency into its proceedings.

Respectfully Submitted,

PUBLIC NOTICE RESOURCE CENTER

By: _____/s/_____

Richard Karpel, Executive Director

ORGANIZATIONS JOINING THESE COMMENTS

American Court and Commercial Newspapers	Tennessee Press Association
Arizona Newspapers Association	Texas Press Association
Arkansas Press Association	Utah Press Association
Association of Alternative Newsmedia	Virginia Press Association
California Newspaper Publishers Association	Washington Newspaper Publishers Association
Florida Press Association	Wisconsin Newspaper Association
Georgia Press Association	
Illinois Press Association	
Hoosier State Press Association	
Kansas Press Association	
Kentucky Press Association	
Maryland/Delaware/DC Press Association	
Minnesota Newspaper Association	
Mississippi Press Association	
Missouri Press Association	
Montana Newspaper Association	
National Newspaper Association	
Nebraska Press Association	
Nevada Press Association	
New York News Publishers Association	
North Dakota Newspaper Association	
Ohio Newspaper Association	
Oregon Newspaper Publishers Association	
South Carolina Press Association	
South Dakota Newspaper Association	